

(Attorney Docket No. 03-380-C)

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Examiner: Jeffrey D. Carlson

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

(Attorney Docket No. 03-380-C)

In re the Application of:)	
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Scott A. Rosenberg et al.)	
)	
Serial No.: 10/033,401)	
)	Group Art Unit: 3622
Filed: December 26, 2001)	
)	Examiner: Jeffrey D. Carlson
Confirmation No. 1472)	
)	
For: ADVERTISEMENTS IN A)	
TELEVISION RECORDATION)	
SYSTEM)	

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPEAL BRIEF

Dear Sir:

This Appeal Brief is submitted pursuant to 37 C.F.R. § 41.37, within the two month period from the date of filing the notice of appeal under 37 C.F.R. § 41.31. The Office is authorized to charge the large entity Appeal-Brief fee (\$540.00) to Deposit Account No. 132490 and is generally authorized to charge any underpayment or credit any overpayment in this matter to the same deposit account.

Table of Contents

I.	Real Party in Interest	1
II.	Related Appeals and Interferences	1
III.	Status of Claims	1
IV.	Status of Amendments	1
V.	Summary of Claimed Subject Matter.....	1
VI.	Grounds of Rejection to Be Reviewed on Appeal	6
VII.	Argument	6
	Claims Appendix	17
	Evidence Appendix	24
	Related Cases Appendix	25

I. Real Party in Interest

The real party in interest is the DirecTV Group, Inc., to which this invention is assigned.

II. Related Appeals and Interferences

This appeal brief is for U.S. Patent Application No. 10/033,401, which is a continuation application of U.S. Patent Application No. 09/978,144. A Notice of Appeal before the Board of Patent Appeals and Interferences of the U.S. Patent and Trademark Office has been filed and is still pending for U.S. Patent Application No. 09/978,144. The Board of Patent Appeals and Interferences has not rendered a decision for the Notice of Appeal filed for U.S. Patent Application No. 09/978,144.

III. Status of Claims

Pending and under appeal are claims 1, 7-10, 12, 13, 20, 21, 23, 27-33, and 35-38, of which claims 1, 20, and 37 are independent and the remainder are dependent. A clean set of the pending claims is attached in the Claims Appendix.

IV. Status of Amendments

No amendments were filed subsequent to the final rejections.

V. Summary of Claimed Subject Matter

As noted above, there are three independent claims: claims 1, 20, and 37. Those claims relate generally to digital video recorders, and more specifically, to a method and system for determining and playing ads in digital video recorders. *See*, specification, page 1, lines 13-15.

A. Summary of the subject matter of claim 1

Claim 1 recites a method of placing an ad into a digital video output stream of a digital video recorder (DVR) (*see*, e.g., specification, page 8, lines 3-5 and page 11, lines 2-3), the method comprising:

(i) while the digital video output stream of the (DVR) includes an index of programs recorded at the DVR but does not include the ad or video of a program recorded at the DVR (*see*, e.g., specification, page 16, lines 13-15, page 19, lines 1-6, and Fig. 3d), the DVR detecting that the digital video output stream should change from the index of programs recorded at the DVR to the video of the program recorded at the DVR (*see*, e.g., specification, page 11, lines 4-6, page 16, lines 13-17, page 24, lines 4-5, and Fig. 2 (reference character 200)),

(ii) the DVR obtaining the ad (*see*, e.g., specification, page 13, lines 9-10),

(iii) the DVR placing the ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR (*see*, e.g., specification, page 16, lines 13-17, page 19, lines 2-11, and Fig. 3d (reference characters 300, 308, and 310)), wherein the DVR that places the ad into the digital video output stream outputs the digital video output stream to a display device that is connected directly to the DVR (*see*, e.g., specification, page 10, lines 11-13), and wherein the ad wipes across a screen of the display device starting from a first side of the screen and ending at a second side of the screen without overlapping any portion of the index of programs recorded at the DVR or any portion of the video of the program recorded at the DVR (*see*, e.g., specification, page 19, lines 6-11, page 24, lines 17-19, and Fig. 3d (reference characters 304 and 310)), and

(iv) thereafter, the DVR removing the index of programs recorded at the DVR from the digital video output stream and adding the video of the program recorded at the DVR to the digital video output stream so that the digital video output stream simultaneously includes the video of the program recorded at the DVR and the ad but does not include the index of programs

recorded at the DVR (*see*, e.g., specification, page 16, lines 13-17, page 19, lines 2-11, and Fig. 3d (reference characters 304, 308, and 312)).

B. Summary of the subject matter of claim 20

Claim 20 recites a computer software product having instructions executable by a computer processor within a digital video recorder (DVR) to perform a method for placing an ad into a digital video output stream of the DVR (*see*, e.g., specification, page 8, lines 6-10, page 27, lines 10-11, and Fig. 1 (reference characters 108 and 114)), the computer software product comprising:

(i) first instructions configured to cause the DVR to detect that the video output stream should change from an index of programs recorded at the DVR to video of a program recorded at the DVR (*see*, e.g., specification, page 11, lines 4-6, page 16, lines 13-17, page 24, lines 4-5, and Fig. 2 (reference character 200)), wherein the first instructions are executable while the digital video output stream of the DVR includes the index of programs recorded at the DVR but does not include the ad or the video of the program recorded at the DVR (*see*, e.g., specification, page 16, lines 13-17, page 19, lines 1-13, and Fig. 3d (reference characters 300 and 310)),

(ii) second instructions configured to cause the DVR to obtain the ad (*see*, e.g., specification, page 13, lines 9-10), and

(iii) third instructions configured to cause the DVR to place the ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR (*see*, e.g., specification, page 16, lines 13-17, page 19, lines 2-11, and Fig. 3d (reference characters 300, 308, and 310)), wherein the DVR that places the ad into digital video

output stream outputs the digital video output stream to a display device that is connected directly to the DVR (*see, e.g., specification, page 10, lines 11-13*), and wherein the ad wipes across a screen of the display device starting from a first side of the screen and ending at a second side of the screen without overlapping any portion of the index of programs recorded at the DVR or any portion of the video of the program recorded at the DVR (*see, e.g., specification, page 19, lines 6-11, page 24, lines 17-19, and Fig. 3d (reference characters 304 and 310)*), and, thereafter, cause the DVR to remove the index of programs recorded at the DVR from the digital video output stream and to add the video of the program recorded at the DVR to the digital video output stream so that the digital video output stream simultaneously includes the video of the program recorded at the DVR and the ad but does not include the index of programs recorded at the DVR (*see, e.g., specification, page 16, lines 13-17, page 19, lines 2-11, and Fig. 3d (reference characters 304, 308, and 312)*).

C. Summary of the subject matter of claim 37

Claim 37 recites a method of placing an ad into a digital video output stream of a digital video recorder (DVR) (*see, e.g., specification, page 8, lines 3-5 and page 11, lines 2-3*), the method comprising:

(i) while the digital video output stream of the (DVR) includes an index of programs recorded at the DVR but does not include the ad or video of a program recorded at the DVR (*see, e.g., specification, page 16, lines 13-15, page 19, lines 1-6, and Fig. 3d*), the DVR detecting that the digital video output stream should change from the index of programs recorded at the DVR to the video of the program recorded at the DVR (*see, e.g., specification, page 11, lines 4-6, page 16, lines 13-17, page 24, lines 4-5, and Fig. 2 (reference character 200)*),

(ii) the DVR collecting user information including a geographic location (*see, e.g.,* specification, page 14, lines 18-19, page 20, lines 1-2, and page 25, lines 4-6),

(iii) the DVR obtaining the ad based on time information and the geographic location (*see, e.g.,* specification, page 13, lines 9-10, page 15, lines 1-6, and page 17, lines 13-16),

(iv) the DVR placing the ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR (*see, e.g.,* specification, page 16, lines 13-17, page 19, lines 2-11, and Fig. 3d (reference characters 300, 308, and 310)), wherein the DVR that places the ad into the digital video output stream outputs the digital video output stream to a display device that is connected directly to the DVR (*see, e.g.,* specification, page 10, lines 11-13), and wherein the ad wipes across a screen of the display device starting from a first side of the screen and ending at a second side of the screen without overlapping any portion of the index of programs recorded at the DVR or any portion of the video of the program recorded at the DVR (*see, e.g.,* specification, page 19, lines 6-11, page 24, lines 17-19, and Fig. 3d (reference characters 304 and 310)), and

(v) thereafter, the DVR removing the index of programs recorded at the DVR from the digital video output stream and adding the video of the program recorded at the DVR to the digital video output stream so that the digital video output stream simultaneously includes the video of the program recorded at the DVR and the ad but does not include the index of programs recorded at the DVR (*see, e.g.,* specification, page 16, lines 13-17, page 19, lines 2-11, and Fig. 3d (reference characters 304, 308, and 312)).

VI. Grounds of Rejection to Be Reviewed

- a. Claims 1, 7-10, 12, 13, 20, 21, 23, 27-28, 31, 33, and 35-36 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent Application Publication No. 2001/049820 (Barton) in view of Official Notice.
- b. Claims 29 and 30 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Barton, in view of Official Notice, and further in view of U.S. Patent No. 5,272,525 (Borchardt).
- c. Claim 32 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Barton in view of Official Notice, and further in view of U.S. Patent Application Publication No. 2003/0195797 (Klug).
- d. Claims 37 and 38 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Barton in view of Official Notice and further in view of U.S. Patent No. 7,337,456 (Nihei).

VII. Argument

- a. **The Examiner clearly erred in rejecting claims 1, 7-10, 12, 13, 20, 21, 23, 27, 28, 31, 33, 35, and 36 under 35 U.S.C. § 103(a)**

Appellant submits that the Examiner's rejections of claims 1, 7-10, 12, 13, 20, 21, 23, 27, 28, 31, 33, 35, and 36 are clearly erroneous, at a minimum, because the Examiner failed to establish *prima facie* obviousness of any of those claims over Barton and the Official Notice.

With regard to independent claims 1 and 20, Appellant submits that Barton and the Official Notice do not reasonably or logically lead to every limitation recited in those claims. Appellant respectfully points out that the Federal Circuit has recently confirmed this requirement for obviousness rejections. (*See, Honeywell Int'l. Inc. et al. v. United States et al.*, Case No

2008-5181, page 14, (Fed. Cir., Feb. 18, 2010) (“failure to prove that the cited references disclose [an] element [of a claim is a failure] to carry [the] burden of proving ... that the claimed invention would have been obvious to one of skill in the art.”))

(i) Official Notice

Per the office action mailed 15 January 2010, “Official Notice is taken that it was well known to enhance video content by including visual transitions between portions of video content. One typical video transition has been traditionally referred to as a ‘wipe’ – much as Appellant describes in his figure 3(d) and referred to as a ‘wipe’ in the instant specification and current claims. A long time ago George Lucas used this technique heavily in the Star Wars Original trilogy (1977+) whereby a first scene (first video mode) was wiped over by a second scene (second video mode). In the middle stages of this wipe, both scenes were simultaneously on the screen but without overlap. One of ordinary skill has understood that video transitions such as a wipe (and others such as dissolve, fade, blinds, etc.,) help smooth or create fanciful transitions between different video portions.” *See*, office action, page 3.

(ii) Barton and the Official Notice do not reasonably or logically lead to “the DVR placing the ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR”

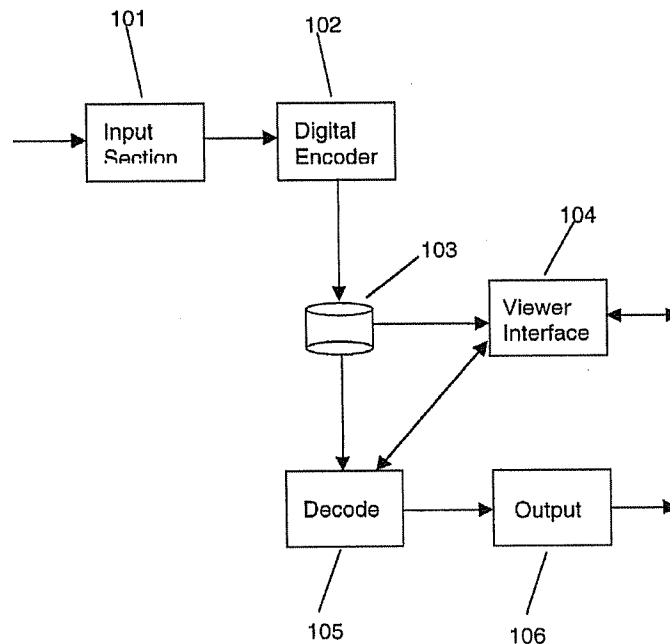
The foregoing quoted limitation is recited in claim 1. Claim 20 recites a similar limitation except that claim 20 recites “the DVR to place” instead of “the DVR placing.” Since Appellant is arguing claims 1, 7-10, 12, 13, 20, 21, 23, 27, 28, 31, 33, 35, and 36 as a group, to make this paper more readable, Appellant discusses the foregoing quoted limitation of claim 1 without repeating the similar limitation of claim 20.

First, Appellant points out that the Examiner misstated language of Appellant's claims. In the office action mailed 15 January 2010, when discussing the rejections of independent claims 1 and 20 and dependent claims 21, 27, 28, 33, 35, and 36, the Examiner stated, *inter alia*, "Regarding the claimed feature that the ***advertising is displayed simultaneously with the video modes***, it is unstated in Barton" See, office action mailed 15 January 2010, section 4, lines 9-10, emphasis added. Appellant submits that none of the pending claims, including independent claims 1 and 20, recite "that the ***advertising is displayed simultaneously with the video modes***."

Next, although claim 1 does not recite "that the ***advertising is displayed simultaneously with the video modes***," claim 1 does recite "***the DVR placing*** the ad into the digital video output stream so that the digital video output stream ***simultaneously*** includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR." (Emphasis added). Appellant submits that a DVR placing an ad into a digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad, on its own, does not include simultaneously displaying the ad and index of programs. Appellant also submits that Barton and the Official Notice do not reasonably or logically lead to the DVR placing the ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR, as recited in various ways in claim 1 and 20.

Barton includes FIG. 1, which is "a block schematic diagram of a preferred embodiment of a digital video recording system according to the invention." See, Barton, paragraph 0017. A copy of that figure is reproduced below. The digital video recording system includes a storage

device 103, a Viewer Interface 104, a Decode module 105, and an Output module 106. *See*, Barton, paragraph 0017 and FIG. 1.

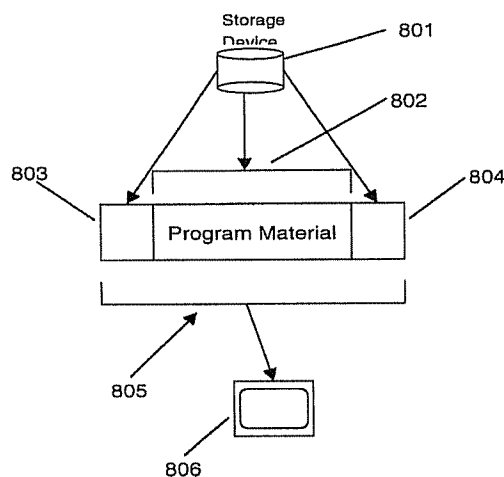


Barton – FIG. 1

According to Barton, the viewer selects the desired program stored on the storage device 103 through the Viewer Interface 104, and the selected program is accessed from the storage device 103 and decoded into analog form for presentation onto a television set by the Decode module 105. If the display is a digital monitor, for example, the Decode module 105 converts the stored program into the proper digital format, and the Output module 106 presents the Decode module's 105 output into an acceptable signal format (analog or digital) to the viewer's television or monitor. *See*, Barton, paragraphs 0028-0029. The invention (of Barton) presents the viewer with a list 201 of the programs stored on the storage device. *See*, Barton, paragraph 0030.

Referring to FIG. 1 of Barton, that figure shows arrows extending away from the right sides of Viewer Interface 104 and Output module 106. As far as Appellant can tell, those arrows illustrate that Viewer Interface 104 and Output module 106 provide separate outputs. Appellant submits that Barton does not disclose or suggest that the digital video recording system places an ad into either of those separate outputs so that either of those outputs simultaneously includes the index of programs recorded at the DVR (e.g., the list 201) and the ad but does not include the video of the program recorded at the DVR.

Furthermore, Barton discloses that bookending ads are selected by a Bookend Program module 904, and each ad is selected from the storage device 903 by the Bookend Program module 904. *See*, Barton, paragraph 0046. Barton includes FIG. 8, which is “a block schematic diagram of a preferred embodiment of the invention showing the bookending concept according to the invention.” *See*, Barton, paragraph 0024. A copy of Barton, FIG. 8, is reproduced below. Of the items shown in FIG. 8, Barton refers to item 801 as a Storage Device, item 802 as program material, item 803 as an ad, item 804 as another ad, item 805 as the ads and program material, and item 806 as a viewer.



Barton – FIG. 8

Even if it is assumed, for the sake of argument, that (i) a recording of George Lucas' Star Wars original trilogy (as identified in the Official Notice) amounts to the program material 802, (ii) the recording of George Lucas' Star Wars original trilogy includes a visual transition between portions of video content, such as a wipe (as identified in the Official Notice), and (iii) the list 201 of programs stored on the storage device identifies the recording of George Lucas' Star Wars original trilogy, Appellant submits that Barton and the Official Notice do not disclose or suggest that that a DVR places (or that George Lucas used a DVR to place) an ad into a digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR (e.g., the list 201) and the ad but does not include the video of the program recorded at the DVR.

Accordingly, Appellant submits that Barton and the Official Notice do not reasonably or logically lead to the DVR placing the ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR, as recited in various ways in claim 1 and 20. Since Barton and the Official Notice do not reasonably or logically lead to every limitation recited in claims 1 and 20, Appellant submits that the Examiner has not established *prima facie* obviousness of claims 1 and 20 and claims 1 and 20 are therefore allowable.

(iii) Dependent claims 7-10, 12, 13, 21, 23, 27, 28, 31, 33, 35, and 36

Each of dependent claims 7-10, 12, 13, 21, 23, 27, 28, 31, 33, 35, and 36 depends from one of independent claims 1 and 20. Pursuant to 35 U.S.C. § 112, fourth paragraph, a claim in dependent form shall be construed to incorporate by reference all the limitations to which it refers. Since Barton and the Official Notice do not reasonably or logically lead to every

limitation recited in independent claims 1 and 20, and since claims 7-10, 12, 13, 21, 23, 27, 28, 31, 33, 35, and 36 are to be construed as incorporating by reference all the limitations of either claim 1 or claim 20, Appellant submits that Barton and the Official Notice do not reasonably or logically lead to every limitation of claims 7-10, 12, 13, 21, 23, 27, 28, 31, 33, 35, and 36. Accordingly, without conceding the Examiner's remarks regarding claims 7-10, 12, 13, 21, 23, 27, 28, 31, 33, 35, and 36, Appellant submits that claims 7-10, 12, 13, 21, 23, 27, 28, 31, 33, 35, and 36 are allowable.

b. The Examiner clearly erred in rejecting claims 29 and 30 under 35 U.S.C. § 103(a)

The Examiner rejected dependent claims 29 and 30 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Barton, in view of Official Notice, and further in view of Borchardt. Since claims 29 and 30 depend from independent claim 1, Appellant submits that, pursuant to 35 U.S.C. § 112, fourth paragraph, claims 29 and 30 are to be construed as incorporating by reference all the limitations of claim 1.

As stated above, Barton and the Official Notice do not reasonably or logically lead to the DVR placing the ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR, as recited in various ways in claims 1 and 20. Appellant submits that Borchardt does not make up for that deficiency of Barton and the Official Notice.

Since Barton, the Official Notice, and Borchardt do not reasonably or logically lead to every limitation recited in claim 1 and since claims 29 and 30 depend from claim 1, without conceding the Examiner's remarks regarding claims 29 and 30, Appellant submits that Barton,

the Official Notice, and Borchardt do not reasonably or logically lead to every limitation recited in claims 29 and 30. Accordingly, Appellant submits that claims 29 and 30 are allowable.

c. The Examiner clearly erred in rejecting claim 32 under 35 U.S.C. § 103(a)

The Examiner rejected dependent claim 32 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Barton, in view of Official Notice, and further in view of Klug. Since claim 32 depends from claim 10 and claim 10 depends from independent claim 1, Appellant submits that, pursuant to 35 U.S.C. § 112, fourth paragraph, claim 32 is to be construed as incorporating by reference all the limitations of claim 1.

As stated above, Barton and the Official Notice do not reasonably or logically lead to the DVR placing the ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR, as recited in various ways in claims 1 and 20. Appellant submits that Klug does not make up for that deficiency of Barton and the Official Notice.

Since Barton, the Official Notice, and Klug do not reasonably or logically lead to every limitation recited in claim 1 and since claim 32 indirectly depends from claim 1, without conceding the Examiner's remarks regarding claim 32, Appellant submits that Barton, the Official Notice, and Klug do not reasonably or logically lead to every limitation recited in claim 32. Accordingly, Appellant submits that claim 32 is allowable.

d. The Examiner clearly erred in rejecting claims 37 and 38 under 35 U.S.C. § 103(a)

The Examiner rejected independent claim 37 and dependent claim 38 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Barton in view of Official Notice and further in view of Nihei.

Claim 37 recites, *inter alia*, the DVR placing the ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR. As indicated above when discussing claims 1 and 20, Barton and the Official Notice do not reasonably or logically lead to the DVR placing the ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR. Appellant submits that Nihei does not make up for that deficiency of Barton and the Official Notice.

In Nihei, an advertisement obtaining section 155 of an advertisement transmitter 150 obtains advertisement data from a transmission advertisement database 151, and an advertisement transmitting section 156 transmits the obtained advertisement data to an advertisement receiver 100 as an advertisement transmission row 180. *See*, Nihei, column 6, lines 32-36. The advertisement receiver 100 is an apparatus which receives an electronic advertisement transmitted from the advertisement transmitter 150 and presents it to the user. For example, the advertisement receiver may comprise a portable computer or a car navigation system, but is not restricted to these. *See*, Nihei, column 9, lines 22-27.

Since Nihei does not disclose or suggest that the advertisement transmitter or the advertisement receiver amount to a DVR and since Nihei does not disclose or suggest that either

or both the advertisement transmitter and advertisement receiver place an ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad, Appellant submits that even if Barton was modified by the Official Notice and Nihei, the combination of Barton, the Official Notice, and Nihei still falls short of reasonably or logically leading to the DVR placing the ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR, as recited in claim 37. Accordingly, Appellant submits that Barton, the Official Notice, and Nihei do not reasonably or logically lead to every limitation recited in claim 37, and claim 37 is therefore allowable.

Furthermore, claim 38 depends from independent claim 37. Pursuant to 35 U.S.C. § 112, fourth paragraph, claim 38 shall be construed to incorporate by reference all the limitations to claim 37. Since Barton, the Official Notice, and Nihei do not reasonably or logically lead to every limitation recited in independent claim 37, and since claim 38 is to be construed as incorporating by reference all the limitations of claim 37, Appellant submits that Barton, the Official Notice, and Nihei do not reasonably or logically lead to every limitation of claim 38. Accordingly, without conceding the Examiner's remarks regarding claim 38, Appellant submits that claim 38 is allowable.

e. Conclusion

Appellant has demonstrated that the rejections of claims 1, 7-10, 12, 13, 20, 21, 23, 27-33, and 35-38 are in error as a matter of law. Appellant therefore requests reversal of the rejections and allowance of the claims.

Respectfully submitted,

**McDONNELL BOEHNEN
HULBERT & BERGHOFF LLP**

Date: April 20, 2010

By: /David L. Ciesielski/
David L. Ciesielski
Reg. No. 57,432

CLAIMS APPENDIX

1. (Previously presented) A method of placing an ad into a digital video output stream of a digital video recorder (DVR), the method comprising:

while the digital video output stream of the (DVR) includes an index of programs recorded at the DVR but does not include the ad or video of a program recorded at the DVR, the DVR detecting that the digital video output stream should change from the index of programs recorded at the DVR to the video of the program recorded at the DVR;

the DVR obtaining the ad;

the DVR placing the ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR, wherein the DVR that places the ad into the digital video output stream outputs the digital video output stream to a display device that is connected directly to the DVR, and wherein the ad wipes across a screen of the display device starting from a first side of the screen and ending at a second side of the screen without overlapping any portion of the index of programs recorded at the DVR or any portion of the video of the program recorded at the DVR; and

thereafter, the DVR removing the index of programs recorded at the DVR from the digital video output stream and adding the video of the program recorded at the DVR to the digital video output stream so that the digital video output stream simultaneously includes the video of the program recorded at the DVR and the ad but does not include the index of programs recorded at the DVR.

2-6. (Cancelled)

7. (Previously presented) The method of claim 1, wherein the ad is obtained in real-time.

8. (Previously presented) The method of claim 1, wherein the ad is obtained by an ad placement engine within the DVR.

9. (Previously presented) The method of claim 1, wherein the ad is obtained by an ad placement engine within the DVR, and wherein the ad placement engine uses previously collected user information to obtain the ad.

10. (Previously presented) The method of claim 1, wherein the ad is obtained by an ad placement engine within the DVR, and wherein the ad placement engine uses context information and previously collected user information to obtain the ad.

11. (Cancelled)

12. (Previously presented) The method of claim 1, wherein the ad is an animation.

13. (Previously presented) The method of claim 1, wherein the ad is dynamically placed.

14-19. (Cancelled)

20. (Previously presented) A computer software product having instructions executable by a computer processor within a digital video recorder (DVR) to perform a method for placing an ad into a digital video output stream of the DVR, the computer software product comprising:

first instructions configured to cause the DVR to detect that the video output stream should change from an index of programs recorded at the DVR to video of a program recorded at the DVR, wherein the first instructions are executable while the digital video output stream of the DVR includes the index of programs recorded at the DVR but does not include the ad or the video of the program recorded at the DVR;

second instructions configured to cause the DVR to obtain the ad; and

third instructions configured to cause the DVR to place the ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR, wherein the DVR that places the ad into digital video output stream outputs the digital video output stream to a display device that is connected directly to the DVR, and wherein the ad wipes across a screen of the display device starting from a first side of the screen and ending at a second side of the screen without overlapping any portion of the index of programs recorded at the DVR or any portion of the video of the program recorded at the DVR, and,

thereafter, cause the DVR to remove the index of programs recorded at the DVR from the digital video output stream and to add the video of the program recorded at the DVR to the digital video output stream so that the digital video output stream simultaneously includes the video of the program recorded at the DVR and the ad but does not include the index of programs recorded at the DVR.

21. (Previously presented)The method of claim 1,
wherein detecting that the digital video output stream should change from the index of programs recorded at the DVR to the video of the program recorded at the DVR is carried out by software of the DVR.

22. (Cancelled)

23. (Previously presented)The method of claim 1,
wherein the ad is a still ad comprising an individual frame,
the method further comprising:
replicating the individual frame a number of times to fill up a designated time segment
that the ad is displayed.

24-26. (Cancelled)

27. (Previously presented)The method of claim 1, further comprising:
after removing the index of the programs recorded at the DVR from the digital video

output stream and adding the video of the program recorded at the DVR to the digital video output stream, removing the ad from the digital output stream so that the digital video output stream includes the video of the program recorded at the DVR but does not include the ad and the index of the programs recorded at the DVR.

28. (Previously presented) The method of claim 1, wherein detecting that the digital video output stream should change from the index of the programs recorded at the DVR to the video of the program recorded at the DVR includes detecting that the program recorded at the DVR has been selected for playback.

29. (Previously presented) The method of claim 1, further comprising:
wherein the display device connects to the DVR via a wired connection.

30. (Previously presented) The method of claim 1, further comprising:
wherein the display device connects to the DVR via a wireless connection.

31. (Previously presented) The method of claim 1, further comprising:
prior to obtaining the ad, downloading the ad from a server and storing the ad at a memory device of the DVR,

wherein the video of the program recorded at the DVR is stored at the memory device.

32. (Previously presented) The method of claim 10, wherein the context information comprises information selected from the group consisting of (i) time information, and (ii) a

movie title.

33. (Previously presented)The computer software product of claim 20, wherein the first instructions detect that the video output stream should change from the index of the programs recorded at the DVR to the video of the program recorded at the DVR by detecting that the program recorded at the DVR has been selected for playback.

34. (Cancelled)

35. (Previously presented)The method of claim 1,
wherein the ad wipes across the screen horizontally, and
wherein the first side of the screen is a left-most side of the screen, and the second side of the screen is a right-most side of the screen.

36. (Previously presented)The method of claim 1, wherein the ad wipes across the screen vertically.

37. (Previously presented) A method of placing an ad into a digital video output stream of a digital video recorder (DVR), the method comprising:

while the digital video output stream of the (DVR) includes an index of programs recorded at the DVR but does not include the ad or video of a program recorded at the DVR, the DVR detecting that the digital video output stream should change from the index of programs recorded at the DVR to the video of the program recorded at the DVR;

the DVR collecting user information including a geographic location;

the DVR obtaining the ad based on time information and the geographic location;

the DVR placing the ad into the digital video output stream so that the digital video output stream simultaneously includes the index of programs recorded at the DVR and the ad but does not include the video of the program recorded at the DVR, wherein the DVR that places the ad into the digital video output stream outputs the digital video output stream to a display device that is connected directly to the DVR, and wherein the ad wipes across a screen of the display device starting from a first side of the screen and ending at a second side of the screen without overlapping any portion of the index of programs recorded at the DVR or any portion of the video of the program recorded at the DVR; and

thereafter, the DVR removing the index of programs recorded at the DVR from the digital video output stream and adding the video of the program recorded at the DVR to the digital video output stream so that the digital video output stream simultaneously includes the video of the program recorded at the DVR and the ad but does not include the index of programs recorded at the DVR.

38. (Previously presented)The method of claim 37, wherein the time information includes a current time and a time when a restaurant near the geographic location closes.

EVIDENCE APPENDIX

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RELATED PROCEEDINGS APPENDIX

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